THE HON'BLE SRI JUSTICE C.V. RAMULU

Monday, 21st August, 2006

W.P.Nos.2736 and 3756 of 2004

Between:

K.V.S.N. Raju … Petitioner

and

The Govt.of A.P., rep.by its
Secretary, Irrigation & CAD (PWD)
Department, Secretariat,
Hyderabad and others … Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.Nos.2736 and 3756 of 2004

COMMON ORDER:

In these two Writ Petitions, common questions of law and fact arise for consideration; therefore, they are being disposed of by this common Order.

Through the impugned Orders dated 6-2-2004 of the 2nd respondent, the petitioners were black listed from the list of Special Class contractors as per G.O.Ms.No.521, dated 10-12-1984, G.O.Ms.No.23, dated 5-3-1999 and Clause 2.07(b) of the tender document. In the impugned Orders, it is stated that the petitioners have suppressed certain information regarding works on hand while submitting the technical bids.

It seems, a tender notice dated 8-2-2000 was issued by the 4th respondent-Superintending Engineer for the work of fabrication and erection of gates for the head regulator of AKBR of AMRP Lift Scheme. In response to the above tender notice, petitioners made applications for issue of tender schedule by paying Rs.4,000/- each. The last date for receipt of the tenders was 1-3-2000. The technical bid was opened on 2-3-2000 and the price bids were to be opened on 8-3-2000. After opening the technical bid, petitioners were declared to have been qualified for opening the price bid, after evaluation by the Superintending Engineer. The actual date for opening of the price bid was 8-3-2000; however, the same was postponed four times and finally, the price bid of the qualified tenders

was opened on 10-4-2000. The tenders are valid for three months i.e. upto 1-6-2000. However, the petitioner in Writ Petition No.2736 of 2004 was asked to extend the validity upto 31-8-2000, while the petitioner in Writ Petition No.3756 of 2004 was asked to the extend the validity of the tender upto 30-11-2000 and they obeyed the same. Thereafter, they did not extend the validity of the tenders; therefore, their Earnest Money Deposit was returned to them as their tenders were disqualified. Again the tenders were called for, for the same work through the tender notice dated 6-2-2001. The petitioners have again offered tenders against this work. It seems, on certain representations received stating that the petitioners had suppressed certain information while submitting the tenders for the works under Tender Notice No.10/SE/1999-2000, dated 8-2-2000, show cause notices were issued to them. Further, the petitioners had given an undertaking that they had no works on hand other than those shown in Statement No.IV(a) as on 1-3-2000. But, subsequently on enquiries, it has been proved that they had works on hand as on 1-3-2000, which were not shown by them. It was further stated that there are sufficient reasons to believe that the petitioners are guilty of suppression of information regarding works on hand for achieving more bid capacity in order to secure advantage of qualifying in the tenders and that the said suppression amounts to malpractice and adoption of fraudulent methods. Petitioners submitted explanation to the show cause notices asserting that G.O.Ms.No.521, dated 10-12-1984 had no application and they have not violated the clauses of G.O.Ms.No.23, dated 5-3-1999. The respondents have no power to blacklist them from the list of special class contractors. The tenders were cancelled and were renotified. In the subsequent tender notice, clause 2.07(b) was not incorporated. Petitioner in Writ Petition No.2736 of 2004 also stated

that there was no fly slip of clause 2.07(b) attached at page 4 of the tenders and he had not signed on such fly slip. After the said explanation, the impugned Orders were passed blacklisting the petitioners. Aggrieved by the same, the petitioner in Writ Petition No.3756 of 2004 earlier filed Writ Petition No.2902 of 2004. However, when the matter came up for admission, since the Government of Andhra Pradesh issued G.O.Ms.No.94, dated 1-7-2003 passing comprehensive orders with regard to tender procedure and registration of the contractors' Rules, it had withdrawn the Writ Petition with liberty to file a fresh Writ Petition. Thereafter, the present Writ Petitions are filed.

Separate counter affidavits have been filed by the 4th respondent denying the allegations made by the petitioners. It is *inter alia* stated that the petitioners had suppressed information about the works on hand; therefore, the Commissionerate of Tenders directed to take appropriate action against them as per Clause 2.07(b) of the tender document i.e., forfeiture of Earnest Money Deposit and blacklisting the firms. Insofar as the petitioner in Writ Petition No.2736 of 2004 is concerned, the Executive Engineer had clearly informed that there is a balance work as on 1-3-2000 in respect of Bobbarlanka, Vijjeswaram, S.A.C. barrage gates and Chennamukkapally Head Regulator. Regarding the petitioner in Writ Petition No.3756 of 2004, the work of 'manufacturing and supplying Hydraulic Cylinder with hand pump fitting and Rotary dumper for automatic gates size 9mx3m-23 gates for OZAT pickup weir' in Gujarat State was pending as on 1-3-2000. It is also stated that the contents of Clause 2.07(b) were incorporated at page-26 of the tender schedules and Clause 2.07(b) is an elaboration of clause 2.07(a) only, which exists in all schedules at same place. Further, after careful examination of all the issues and after giving full

opportunity to the petitioners, the impugned Orders were passed blacklisting the petitioners from the list of Special Class Contractors.

Heard both sides and perused the entire material made available on record.

The facts are not much in dispute. Both the petitioners have participated in the tenders called for by the 4th respondent-Superintending Engineer. The bid was knocked in their favour, but thereafter the tenders were extended from time to time and finally they were cancelled. The petitioner in Writ Petition No.2736 of 2004 resubmitted his tender for the same work, when it was notified again. The petitioner in Writ Petition No.3756 of 2004 did not participate in the bid pursuant to the tender notice dated 6-2-2001, which was issued for the same work. Thereafter, show cause notices were issued stating that on certain representations received by the respondents, the matter was enquired into and it was found that the petitioners have suppressed certain information as to certain incomplete works available on hand, i.e. they were shown as if the works were completed. Petitioners submitted explanation stating that they have not suppressed any information. The works were at the verge of completion and not even the works of Rs.4.00 lakhs to Rs.5.00 lakhs were pending. In fact, the works were completed even before the tenders were finalized. Therefore, the question of suppression of any information, as such, does not arise. Further, the petitioner in Writ Petition No.2736 of 2004 has not signed the fly slips regarding condition No.2.07(b) of the terms and conditions in the tender document, while in Writ Petition No.3756 of 2004, the fly slips were subsequently attached. Further, in the subsequent tender notices, this condition was not there.

The original records relating to the tenders in question, when

called for, were produced by learned Government Pleader. It is noticed that the petitioner in Writ Petition No.2736 of 2004 did not sign on the fly slips against condition No.2.07(b) of the tender document. Insofar as the petitioner in Writ Petition No.3756 of 2004, it is found that the fly slips were subsequently attached. It is also the fact that in subsequent tenders, this clause was not there. Learned counsel for the petitioners stated that even assuming that there is some lapse on the part of the petitioners in submitting certain information, that may result in rejection of the tender, but not blacklisting him for ever. Further, it is also a fact that the tenders were not fructified. In fact, they were lapsed and for a lapsed tender, it cannot be said that action can be initiated by the respondents for disqualifying the petitioners on the ground that they have suppressed information regarding completion of certain works, which were on hand. Further, on an examination of the tender forms submitted by the petitioners, it is revealed that at the end of the tenders, there were no fly slips and whatever is available at condition Nos.2.07(b), 3.01(b) and 25.17 were again hand written, but the original of which is not available. There is no explanation for the necessity of reintroducing them at the end of the tender forms again and it seems, that is not in original handwriting. They are all Xerox copies. Further, the signature of the Superintending Engineer is not available in the tender notices, on each page. This itself would show how the matter was dealt with. May be, the respondents are entitled to take action as per the tender notice. After all, it is a contract between the parties. Even in a case where some information is suppressed for the purpose of gaining advantage of being qualified for the tender, but that itself does not mean they can take action as they like. The tender notice/schedules were not properly made and as noticed above, the petitioner in Writ Petition No.2736 of 2004 has not signed and in other

Writ Petition, though the petitioner's signatures are available, in both the cases, the Superintending Engineer has not signed on each and every page of the contract. Further, it may be noticed that during the pendency of the Writ Petitions, the petitioners were allotted more than one contract and they are continuing with the same.

In view of the fact that the very contract itself lapsed and the tender notice was not properly made and signatures were not properly taken, it cannot be said that the petitioners are bound by clause No.2.07(b) of the tender notice (fly slip). Further, the petitioners have explained the position stating that the works, which were shown to have been completed, were really completed; but no certificate was given by the authorities. In view of the above, I am of the opinion that blacklisting of the petitioners, particularly for the lapses of this nature is neither warranted nor tenable. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the concerned authority is to have an objective satisfaction. The way in which the tender documents are maintained, the way in which fly slips are introduced and the way in which certain clauses, which are already there, are reintroduced in handwriting (xerox) does not inspire the confidence of the Court to say that the respondents have acted in a fair manner while blacklisting the petitioners. Further, the impugned Orders are passed blacklisting the petitioners for indefinite period. It may be said that the Government is exercising its right like any other private citizen, but no democratic Government should with impunity pass proceeding, which will have civil consequences to a citizen, without fair play. It is altogether different that the works purported to have been completed were at the threshold. The fact that the works,

which were shown to be completed, were at the verge of completion and actually completed before finalization of the tenders is not seriously disputed.

In view of the above, the impugned Orders are liable to be set aside and are accordingly set aside. The Writ Petitions are, thus, allowed. No order as to costs.

21-8-2006

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